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Chairman: Mr. Majoor ..... (Netherlands)
later: Mr. Peralta (Vice-Chairman) ..... (Paraguay)
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The meeting was called to order at 3.10 p.m.

Agenda item 64: Promotion and protection of human rights (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/63/292 and A/63/313)

1. **Mr. Alston** (Special Rapporteur on extrajudicial, summary or arbitrary executions), introducing his report (A/63/313), underscored the importance of witness protection arrangements in ending the cycle of impunity for extrajudicial executions. Such arrangements should not be seen as a favour to witnesses, who, by agreeing to testify, were making an immense personal sacrifice, risking intimidation and even death, in the interests of society. Diverse and innovative approaches to witness protection existed around the world; the international community should take advantage of lessons learned and support the development of effective programmes at the national level as needed. The Office of the United Nations High Commissioner for Human Rights (OHCHR) should develop policy tools to highlight the importance of witness protection in national programmes to combat impunity, and the Human Rights Committee should devote greater attention to that issue.

2. Military justice systems were frequently incompatible with human rights obligations. When military personnel were accused of extrajudicial executions, those responsible far too often received only minor punishment or none at all. Fortunately, a growing number of countries had adopted reforms to bring their military justice systems into conformity with international human rights standards and refer cases to the regular criminal justice system whenever appropriate. The report indicated what types of reforms were both necessary and feasible to make military justice systems compatible with human rights and the goal of eliminating impunity.

3. Commissions of inquiry were important as a national-level response to extrajudicial killings. In that context he noted that the commission of inquiry mandated by the National Assembly of Guinea to investigate an incident where security forces had opened fire on unarmed protesters, killing more than 130 and wounding more than 1,500, apparently had not yet met, no witnesses had been contacted and no witness protection arrangements made. That situation had all the hallmarks of a commission being used to distract attention and perpetuate impunity.

4. In Kenya, on the other hand, the commission of inquiry into post-election violence had done exemplary work and prepared a comprehensive and thorough report on extrajudicial executions, not hesitating to identify the police as having played a major role in those executions. The Commission had made recommendations that included the establishment of a special tribunal. The recommendations of similar commissions had in the past been ignored; it was essential that the current Government implement the Commission's recommendations.

5. He once again urged the General Assembly to prohibit the execution of offenders who were under the age of 18 at the time of committing the relevant offence and deplored the continued execution of juvenile offenders. He had for example sent more than 20 communications to the Islamic Republic of Iran in that regard; according to his information, more than 130 juvenile offenders were on death row and some had been executed. While he had been informed that measures had been adopted to reduce the number of death sentences to near zero, he stressed that the execution of a juvenile offender was unacceptable and a violation of that country's obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

6. The Government of the Islamic Republic of Iran must repeal all laws permitting the execution of juvenile offenders, and the judiciary must refrain from condemning juvenile offenders to the death penalty. He regretted that, while that country had issued a standing invitation for all special procedures and despite a request for a country visit that he had made more than four years earlier, a request accepted in principle by the Government, his efforts to schedule a visit to the Islamic Republic of Iran had been rebuffed.

7. He had already reported on his country visits to Afghanistan, Brazil and the Central African Republic to the Human Rights Council. He wished to thank the Government of Brazil in particular for its exemplary cooperation, which provided a model for such visits. In that context, he reiterated the concern that he had expressed to the Human Rights Council that the lack of response by States to requests for country visits could

jeopardize the effectiveness of the special procedures system.

8. He had therefore welcomed the invitation to visit the United States of America in June 2008. He had found that significant reforms were necessary to the criminal justice system to prevent the execution of innocent people. There was a need to enhance judicial independence, ensure adequate defence counsel and review capital cases on the merits at the appellate level. The Military Commissions Act must be amended to ensure that trials of "alien unlawful enemy combatants" included due process rights. Urgent measures were needed to prevent the execution of Mexican and other foreign nationals who were denied consular assistance, increase transparency in the military justice system, make private security contractors accountable and build on efforts to provide reparations to victims in armed conflict situations. He also called for reforms to reduce deaths in immigration detention facilities and for full and open investigations into all deaths of detainees at Guantanamo Bay.

9. **Mr. Zeidan** (Observer for Palestine) asked when the Special Rapporteur would undertake a mission to the occupied Palestinian territories to investigate brutal Israeli practices that continued to result in the unlawful deaths of many Palestinians, including children.

10. **Ms. Basso** (France), speaking on behalf of the European Union, asked whether the Special Rapporteur could make any suggestions on how to strengthen the political will of Governments to establish effective witness protection arrangements as well as on the types of policy tools that the Office of the United Nations High Commissioner for Human Rights should develop to assist Governments in that regard.

11. **Mr. Parola** (Brazil) reaffirmed his Government's commitment to strengthening its dialogue with international human rights mechanisms. It recognized the need to combat violence in Brazilian society by, for example, increasing police salaries, adequately investigating killings by the police, increasing the resources of forensic institutions and restructuring the penitentiary system. A national programme to promote public security and citizenship had been launched to develop effective public-safety policies as well as social programmes, with a view to reducing crime while at the same time protecting human rights. In addition, a centralized database for information on violent crimes linked to all levels of law enforcement had been established to identify risks and develop strategies to combat violence.

12. **Mr. Banos** (United States of America) expressed his Government's appreciation for the work of the Special Rapporteur and underscored the importance of national commissions of inquiry into extrajudicial executions. It did not however agree with all his interpretations of international law, for example with regard to applying the principles of lex specialis in situations of armed conflict, and maintained that the procedures of the Military Commissions contained adequate safeguards. He noted that, in the opinion of the Special Rapporteur, capital punishment did not per se constitute a violation of international law and agreed that that penalty must only be carried out in the most extreme cases and with full procedural safeguards. He agreed with the Special Rapporteur's assessment that in Afghanistan the Taliban were responsible for most unlawful killings. Recalling the Special Rapporteur's report on the situation in Darfur submitted in 2007, he asked whether the Special Rapporteur could offer any suggestions on what the United Nations system could do to put a stop to extrajudicial executions in that region.

13. **Ms. Nelson** (Canada) expressed strong support for the work of the Special Rapporteur and shared his opinion on the importance of effective witness protection programmes. She asked the Special Rapporteur to assess the level of political will in that regard in the countries that he had visited and wondered what OHCHR should do to develop related policy tools. She also asked whether those policy tools should be aimed at the situation in specific States and if so, what criteria should be used to select those States.

14. **Mr. Rastam** (Malaysia) said that he had taken note of the Special Rapporteur's concerns about lack of action relating to his mandate and recommendations and asked whether he thought that the Universal Periodic Review procedure would encourage greater attention to the problem of extrajudicial executions on the part of States.

15. **Mr. Suárez** (Colombia) expressed support for the work of the Special Rapporteur. He underscored the need to clearly define the areas of competency of the ordinary and military judicial systems in relation to such crimes as extrajudicial executions and other grave human rights violations. As the report recognized, great

progress had been made by his Government in ensuring adequate investigation and prosecution of such crimes, in accordance with international norms. He regretted that, in paragraph 61 of the section of the report devoted to Colombia, the Special Rapporteur made reference to a number of judgements of the Inter-American Court of Human Rights, only one of which in fact related directly to Colombia. The Special Rapporteur should have made that clear in order to avoid any confusion.

16. **Mr. Mohammed** (Sudan) stressed that the judicial system in the Sudan functioned in a competent and impartial manner, including with regard to events in Darfur. He urged the Special Rapporteur to devote increased attention to the human rights violations in Afghanistan and Iraq as a result of the United States' intervention in those countries.

17. **Mr. Rezvani** (Islamic Republic of Iran) said that the references to his country in the report were out of context and unjustified. It was not acceptable to refer to unnamed sources of information or to provide vague references to the number of sentences or executions. The Special Rapporteur must provide concrete data and examples to substantiate claims. In addition, the report did not seem to differentiate between sentences delivered by law courts and cases of private retaliation sanctioned by Islamic law. It should also be noted that the Islamic Republic of Iran had carried out a significant reform of the judiciary and had passed a decree that would provide new measures for sentences relating to crimes committed by juveniles.

18. His country was a party to the Convention on the Rights of the Child to which it had entered a reservation that exempted it from any provision that went against Islamic law. He wished to know what criteria had been used by the Special Rapporteur to focus on certain countries, given that unfair practices were in fact taking place in other countries that had not been referred to in the report. His Government's cooperation with international bodies and mandates was well above average, although the same could not be said of a number of countries. Finally, his delegation wished to clarify yet again that there had been a long-standing invitation for the Special Rapporteur to visit the Islamic Republic of Iran, and that that invitation was still valid.

19. **Mr. Alston** (Special Rapporteur on extrajudicial, summary or arbitrary executions) said that he had visited Lebanon and Israel in 2006 following discussions with the Government of Israel. There had been an understanding that he would not visit the occupied territories or report on the situation there. However, that agreement had been based on the assumption that he would be able to visit the occupied territories at some point in the future. He was still interested in visiting the occupied territories.

20. The Universal Periodic Review system represented an important diplomatic initiative. If effective, it would reinforce the work of the treaty bodies and the special procedures of the Human Rights Council. With regard to Afghanistan, it was regrettable that there had been an increase in killings carried out by the Taliban in recent months. His report had also focused on the civilian casualties at the hands of the international forces. There had been some improvement in that situation, and the United States military commanders had acknowledged that more efforts were needed to address the issue.

21. With respect to killings in Afghanistan and Iraq, he had presented a preliminary report on Afghanistan and had been in regular contact with the Iraqi authorities. The situation in Darfur was very troubling: he had received reports of major problems in the Sudan, and it was clear that international action was imperative. The biggest challenge facing the international community was to pre nt impunity for serious crimes. He reiterated that he would welcome the opportunity to visit the Islamic Republic of Iran. He had carried out a number of successful missions, and his visit to Brazil had been exemplary in that it had been based on open and constructive discussions. With respect to the sentences passed under Islamic law in the Islamic Republic of Iran, he would welcome the opportunity to discuss the intricacies of Islamic law with jurists in that country and would welcome data on the number of death sentences passed in cases of crimes committed by juveniles.

22. He clarified that paragraph 61 of the report should refer not only to Colombia because it addressed an issue that affected a number of Member States. It was clear that witness protection schemes were essential for the successful prosecution of unlawful killings, but such schemes were costly and required technical expertise tailored to the needs of the country in question. The witness protection schemes in the United States should serve as the model for other countries. It would be useful therefore if the Office of

the High Commissioner for Human Rights could provide technical expertise and funding to assist other countries develop such schemes.

23. **Mr. Rezvani** (Islamic Republic of Iran) said that his delegation was not convinced by the vague references and data provided in the report and noted that the new Iranian decrees passed were part of the ongoing reform of the judiciary in his country. His delegation urged the Special Rapporteur to take note of the outcome of the Universal Periodic Review.

24. **Mr. Balde** (Guinea-Bissau) asked for clarification of the distinctions between extrajudicial, summary and arbitrary executions.

25. **Mr. Mohammed** (Sudan) said that his delegation was disappointed that the Special Rapporteur had not noted the increased international cooperation and reform promoted by the Government of the Sudan.

26. **Mr. Alston** (Special Rapporteur on extrajudicial, summary or arbitrary executions) said that he had sent 20 communications to the Government of the Islamic Republic of Iran in 2008 with detailed information and specific examples. He could only hope that the new decrees would reduce the number of juveniles sentenced to death in that country. With respect to the definitions of extrajudicial, summary and arbitrary executions, he would prefer to refer to those types of crime as unlawful killings. With regard to the problems in the Sudan, it should be noted that that country's judiciary had been criticized by several international mechanisms. It was for all stakeholders to work to resolve the conflict in Darfur. It was not his intention to focus solely on any particular country: all countries had problems that needed solving.

27. **Mr. Muñoz** (Special Rapporteur on the right to education), introducing his report (A/63/292), said that the report focused on education in emergency situations, in particular situations arising out of conflict or natural disaster. Many Governments, organizations and individuals had provided input for the report. In preparing it, he had found that, in practice, the international community had tolerated violations of the right to education because of the widespread view that education was a development rather than a humanitarian activity.

28. Education was often interrupted during reconstruction and emergency response activities. The number of students and teachers who had been killed in situations of armed conflict had risen dramatically over the last four years. In 2004, at least 27 million boys, girls and young people who had been affected by armed conflicts had had no access to formal education. During the 1990s, natural disasters had had a devastating impact on the educational infrastructure, including schools and teaching activities, depriving children of the opportunity to receive an education.

29. The international community had not taken full political responsibility for fulfilling articles 2 and 28 of the Convention on the Rights of the Child, which stressed the importance of international cooperation. The Dakar Framework for Action on Education for All stated that no countries seriously committed to education for all would be thwarted in their achievement of that goal by a lack of resources. Accordingly, any State that had the desire but lacked the resources to guarantee primary education should be able to obtain the necessary funds.

30. The Minimum Standards for Education in Emergencies, Chronic Crisis and Early Reconstruction spearheaded by the Inter-Agency Network on Education in Emergencies had been developed because of the failure of international humanitarian assistance efforts to include education in their plans. Funding for humanitarian aid for education was extremely low. In 2004, only 1.5 per cent of total commitments for humanitarian aid had been earmarked for education, and in 2007, the figure had only risen to 1.7 per cent.

31. Donors were not fully aware of the importance of the issue and needed to increasingly coordinate their efforts, develop partnerships, conduct research on alternative models of financing and provide capacity-building for risk management. States, donors, multilateral agencies and organizations needed to include education as an integral part of their humanitarian response to situations arising from armed conflict and natural disaster. States should develop plans for ensuring that educational activities continued during emergency situations. Donors should include education in their humanitarian assistance plans, support the Inter-Agency Standing Committee Education Cluster and follow the Minimum Standards of the Inter-Agency Network on Education in Emergencies.

32. *Mr. Peralta (Paraguay), Vice-Chairman, took the Chair.*

33. **Ms. Basso** (France), speaking on behalf of the European Union, said that all relevant parties should work to ensure the right to education both during and after emergency situations. The Special Rapporteur's report stated that an understanding of the context was required, and that statistics were often inadequate. She wished to know what measures could be taken to remedy the problem. The report also called for strategies to protect women and girls in crisis situations; she wondered what actions the Special Rapporteur would recommend towards that aim.

34. **Ms. Al-Thani** (Qatar) asked what action the United Nations should take in order to ensure the right to education in emergency situations.

35. **Mr. Rezvani** (Islamic Republic of Iran) said that benchmarks should be agreed upon in order to appraise States' efforts in promoting education. The provision of free or compulsory education, in legislation or in practice, could constitute one criterion. His own country had been affected by emergency situations in neighbouring States, which had been caused by occupying forces. The Government had worked to integrate large numbers of refugees from those conflicts and had offered them an education, in sharp contrast with some other States' record in that respect.

36. **Mr. Shingiro** (Burundi) noted that the Special Rapporteur's report recommended that donors should increase their education allocation to at least 4.2 per cent of total humanitarian assistance in line with identified need. He asked how that figure had been determined and what proportion of humanitarian assistance was currently allocated to education.

37. **Ms. Medal** (Nicaragua) said that education in her country had been affected by natural disasters and lack of resources. The Government was including education in its response programmes and welcomed the recommendation that the international community should include education in all assistance plans.

38. *Mr. Majoor (Netherlands) resumed the Chair.*

39. **Mr. Muñoz** (Special Rapporteur on the right to education) said that an understanding of the context of emergency situations was essential. It was important to seek to overcome those features in education systems that impeded conflict resolution. Education could play a positive role in building peace, but it could also reinforce conflicts. It had been shown that women and girls with access to education were better equipped to respond to violence.

40. The representative of the Islamic Republic of Iran had rightly pointed to the need for criteria to appraise education systems. Statistics for the number of children whose education had been affected by conflict varied greatly. When humanitarian responses considered only material needs, they treated human beings as objects. Education needed to be included in emergency situations from the beginning, and resources should be available to that end. First, the right to education in emergency situations should be recognized as fundamental, an idea that was enshrined in such instruments as the Universal Declaration of Human Rights, but was still not reflected in the conduct of States. Second, in terms of content, education should foster peacebuilding skills. Third, funding mechanisms such as the Fast Track Initiative Catalytic Fund needed to be improved, and States should consider increasing their donations.

41. The agencies involved in the sector often followed different approaches and lacked coordination. Not only refugees but also internally displaced persons were most in need of education, yet there was no agency with the specific mandate of addressing their needs. Lastly, the recommended increase to at least 4.2 per cent of total humanitarian assistance had been determined by the Inter-Agency Standing Committee Education Cluster on the basis of the progressiveness principle. The current figure of 1.7 per cent earmarked for education was disgraceful and unacceptable. In accordance with the Dakar Framework for Action, there was a need for a political commitment and for resources to fund education in emergency situations.

The meeting rose at 5 p.m.